IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

	:	**CIVIL ACTION**
PAULA G. McGRAW,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WYETH-AYERST LABORATORIES, INC. a division of AMERICAN HOME PRODUCTS CORPORATION,	:	
	:	
Defendant.	:	**NO. 96-5780**

M E M O R A N D U M

Reed, J. **December 23, 1997**

Plaintiff Paula G. McGraw ("McGraw") filed a complaint in this Court against her former employer, Wyeth-Ayerst Laboratories, Inc. ("Wyeth") alleging claims of quid pro quo sexual harassment, hostile work environment sexual harassment, disparate treatment, and retaliation under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. C. S. § 951. Wyeth brought a motion for summary judgment (Document No. 10) on all of McGraw's claims. This Court has jurisdiction over this case under 28 U.S.C. § 1331. Because I find that there are genuine issues of material fact as to the claims of quid pro quo sexual harassment and retaliation under Title VII and the PHRA, I will deny Wyeth's motion as to those claims in Counts I, II, III, and IV of McGraw's complaint. Because I find that Wyeth is entitled to judgment as a matter of law on McGraw's claims of hostile work environment sexual harassment and disparate treatment under Title VII and the PHRA, I will grant Wyeth's motion as to those claims in Counts I and II of McGraw's complaint.

I. BACKGROUND

The following facts are gleaned from the evidence of record and taken in the light most favorable to McGraw, as required in a motion for summary judgment. See Carnegie Mellon University v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

McGraw began working for Wyeth in September of 1990. In October of 1991, McGraw transferred to the Department of Nutritional Regulatory Affairs at Wyeth, where she worked as a regulatory coordinator. Her direct supervisor was Raymond Maggio ("Maggio"). Maggio, McGraw, and two secretaries were the only employees in this department when McGraw started there.

McGraw received a performance evaluation from Maggio at the end of each year. In October of 1992, Maggio rated McGraw's performance "below expectations." McGraw submitted a rebuttal to Maggio's evaluation, objecting among other things to Maggio's "subjective statement that I 'only get along with the men.'" (Def.'s Mem. Ex. G). Upon receipt of McGraw's rebuttal, Maggio immediately sent McGraw a memo indicating his disapproval of a misleading memo she had sent to the field. (Pl.'s Mem. Ex. 23).

In 1993, the relationship between Maggio and McGraw began to change. Maggio asked McGraw to go out after working hours with him on repeated occasions. McGraw sought feedback on her work from another employee, Eric Young, from another department to reduce her interaction with Maggio. (Young dep. at 14; McGraw Aff. ¶ 3). In October of 1993, McGraw's evaluation indicated that her work was "at expectations." Despite this evaluation, however, Maggio expressed his dissatisfaction with McGraw to Thomas Beahm ("Beahm") of the Human Resources department on a number of occasions. (Beahm dep. at 25).

In 1994, Maggio's requests to McGraw that she go out with him increased. In the first three months, Maggio asked her to go out with him at least five times. Before Maggio left for a business trip, he took McGraw's face in his hands and expressed that he wished that he could take her with him. (McGraw dep. at 280). On March 17, 1994, McGraw's birthday, Maggio kissed McGraw without her consent, forcing his tongue into her mouth. (McGraw dep. at 110-111). When he returned from his business trip, he told McGraw that he had thought a lot about her while he was away. (McGraw dep. at 174). In April and May of 1994, Maggio's requests that McGraw go out with him became "constant." (McGraw dep. at 131, 277). After McGraw announced her engagement in the spring of 1994, Maggio told McGraw that she should have considered going out with him. (McGraw dep. at 176). McGraw rebuffed all of Maggio's advances.

On May 9, 1994, Maggio gave McGraw a "verbal" warning,[1] criticizing what he characterized as poor work performance. (Ex. L). In October of 1994, McGraw received an evaluation of "below expectations" from Maggio, and Maggio placed her on a performance improvement plan ("PIP"). Shortly thereafter, while McGraw was discussing a rebuttal she had written to Maggio's recent evaluations with her mother on the phone after hours in her office cubicle, Maggio came to the cubicle and began to scream at her about the need for her to pay attention to her work and that he wanted to see her in his office immediately. (McGraw dep. at 189-202). McGraw feared for her physical safety because she felt Maggio was angry and out of control. At her mother's urging, she left work without stopping to see Maggio. (McGraw dep. at

[1] Although characterized by Maggio as a "verbal" warning, it was actually a typed document addressed to McGraw.

189-202).

The following morning, McGraw spoke to Deborah Helmer ("Helmer") in Wyeth's Human Resources Department about Maggio's conduct of the previous afternoon and his history of personal advances toward her. She indicated that she wanted to file a complaint for sexual harassment. (Helmer dep. at 44-47). McGraw had not previously reported Maggio's conduct because she feared she would lose her job; however, she did relate the incidents to friends outside the company and to her husband. (McGraw dep. at 183-185, 228-230).

Helmer conducted an investigation of McGraw's complaint of sexual harassment. She talked to at least six people who were identified as witnesses by McGraw and Maggio. (Helmer dep. at 53). In some instances, she did not tell the witnesses to whom she talked the identity of the involved parties; instead she only asked them if they had seen any sexual harassment in the office. (Heisterkamp dep. at 24). On October 25, 1994, Helmer notified McGraw and Maggio that she found that McGraw's complaint was unsubstantiated and that they were to keep the matter confidential. (Def.'s Exs. 6 and 7). McGraw claims that the investigation was too cursory and vague to yield any information about her allegations.

The same day that Helmer notified him with the result of the investigation, Maggio met with Helmer and Beahm to discuss what should be done regarding McGraw. He wrote an agenda for the meeting listing two proposals; his first proposal was that McGraw should be immediately dismissed, and his second proposal was that McGraw should be transferred. (Maggio dep. at 302-304; Pl.'s Mem. Ex. 25). Helmer and Beahm advised him in the meeting to focus on McGraw's performance and to continue with the PIP for a "reasonable time." That same day, Maggio harshly critiqued a memo that McGraw had given him to review. (Pl.'s Mem. Ex. 27).

Three days later, she received similarly harsh feedback from him on a report she wrote a month earlier. In November of 1994, Maggio made a recommendation to personnel that McGraw be fired based on her poor performance under the PIP. (Maggio dep. at 458). This recommendation was eventually approved, and McGraw was terminated on February 1, 1995.

II. STANDARD FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure provides that "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" then a motion for summary judgment may be granted.

The moving party has the initial burden of illustrating for the court the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-161 (1970). The movant can satisfy this burden by "pointing out to the district court that there is an absence of evidence to support the nonmoving party's case;" the movant is not required to produce affidavits or other evidence to establish that there are no genuine issues of material fact. Celotex, 477 U.S. at 323-25.

Once the moving party has made a proper motion for summary judgment, the burden switches to the nonmoving party. Under Rule 56(e),

> [w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The court is to take all of the evidence of the nonmoving party as true and to draw all reasonable inferences in his favor in determining if there is a genuine issue of material fact. See Adickes, 398 U.S. at 158-59. In order to establish that an issue is genuine, the nonmoving party must proffer evidence such that a reasonable jury could return a verdict in her favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A proper motion for summary judgment will not be defeated by merely colorable or insignificantly probative evidence. See id. at 249-50.

McGraw alleged the following theories of liability under both Title VII and the PHRA:[2] (1) quid pro quo sexual harassment, (2) hostile work environment sexual harassment, (3) disparate treatment, (4) retaliation. Each of these theories will be analyzed in turn to determine if there are any genuine issues of material fact or if Wyeth is entitled to judgment as a matter of law.

III. LEGAL STANDARDS AND ANALYSIS

A. Quid Pro Quo Sexual Harassment

Title VII makes it unlawful to discharge or otherwise discriminate against an employee on the basis of the employee's race, color, religion, sex or national origin. See 42 U.S.C. § 2000e-2. Two forms of sexual harassment are cognizable claims under Title VII: quid pro quo sexual harassment and hostile work environment sexual harassment. See Meritor Savings Bank FSB v.

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[2] Courts have uniformly interpreted the PHRA consistent with Title VII. See Clark v. Commonwealth of Pennsylvania, 885 F. Supp. 694, 714 (E.D. Pa. 1995); Violanti v. Emery Worldwide A-CF Co., 847 F. Supp. 1251, 1257 (M.D. Pa. 1994). Thus, I will analyze McGraw's claims only under Title VII; however, my analysis and conclusions as to each type of claim are applicable to McGraw's claims under both Title VII and the PHRA.

Vinson, 477 U.S. 57, 65 (1986). To make out a claim for quid pro quo sexual harassment, an employee must show that a supervisor conditioned tangible job benefits on the employee's submission to unwelcome sexual conduct or penalized her for refusing to engage in such conduct. See Hurley v. Atlantic City Police Department, 933 F. Supp. 396, 407 (D.N.J. 1996). The Court of Appeals for the Third Circuit recently set forth the test for a claim of quid pro quo sexual harassment in Robinson v. City of Pittsburgh, 120 F.3d 1286, 1296 (3d Cir. 1997)(quoting 29 C.F.R. § 1604.11(a)(1) and (2)):

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment [or] (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual. . . .

The Robinson court assumed that an employer is strictly liable for any quid pro quo sexual harassment committed by its supervisors, commenting that "[c]ourts have unanimously held that an employer is strictly liable for quid pro quo harassment by a supervisor having actual or apparent authority to carry out the threat or promise that is made to the victim." Id. at 1296 n. 9. Subsection (2)[3] of the test encompasses cases in which an employee's responses to a supervisor's advances are later used in a decision by the supervisor regarding the employee's terms and conditions of employment. Id. at 1297. An employee must demonstrate that "her response was in fact used thereafter as a basis for a decision affecting. . . her compensation, etc." Id.

[3] Robinson was decided after the parties submitted their memoranda of law for this motion for summary judgment; thus, neither party had the benefit of this test to guide their arguments on the quid pro quo claim. Because the motion for summary judgment on the claim of quid pro quo sexual harassment can be resolved with an analysis of only the second prong of the Robinson test, I will only discuss whether McGraw survives the motion under section (2). This does not, however, indicate any position of this Court as to whether McGraw may be able to make a claim for quid pro quo sexual harassment under subsection (1).

McGraw claims that Maggio became increasingly angry and harsher in his evaluations of her as she continued to refuse his advances. McGraw points to Maggio's implementing the PIP and giving her a verbal warning as evidence that Maggio was reacting to McGraw's refusal to reciprocate his interest in her. See Robinson, 120 F.3d at 1298 (noting that conduct effecting compensation, terms, conditions, or privileges of employment could include formal reprimands that result in a notation in an employee's personnel file); Rufo v. Metropolitan Life Insurance Company, 1997 WL 732859 (E.D. Pa. 1997) (holding that genuine issue of material fact was present to preclude summary judgment on quid pro quo claim where supervisor gave employee verbal warnings and bad performance reviews after she reported an incident in which the supervisor touched her breast). In addition, McGraw alleges that Maggio prefaced his requests for her to go out with him with talk about the future of the department, from which McGraw inferred that her future with the department depended on her acquiescence in Maggio's wishes.

Wyeth asserts that Maggio never requested any sexual favors of McGraw nor conditioned any benefits of McGraw's employment on her submission to his alleged sexual advances. Wyeth argues that Maggio's requests to go out were in McGraw's own words "casual requests" and that McGraw never alleged that Maggio exerted pressure on her to submit to his requests.

Wyeth has failed to establish the absence of a genuine issue of material fact as to whether Maggio used McGraw's reactions to his advances as a basis in decisions regarding the terms and conditions of her employment. McGraw has produced evidence such that a reasonable jury could find that her rejection of Maggio's advances resulted in her receiving poor evaluations from Maggio and ultimately being fired on Maggio's recommendation. Thus, Wyeth's motion for summary judgment on these claims under Title VII and the PHRA will be denied.

B. Hostile Work Environment Sexual Harassment

Five elements must be proven to support a hostile work environment claim: (1) that the employee suffered intentional discrimination because of her sex; (2) that the discrimination was pervasive and regular; (3) that the discrimination detrimentally affected the plaintiff; (4) that the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of respondeat superior liability. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990).

In Meritor Savings Bank, the Supreme Court observed that the harassment must be pervasive or severe enough "'to alter the conditions of [the victim's] employment and create an abusive working environment.'" 477 U.S. at 67 (quoting Henson v. City of Dundee, 682 F.2d 897, 904 (11th Cir. 1982)). In making this determination, the totality of the circumstances must be considered, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating or a mere offensive utterance, and whether it reasonably interferes with an employee's work performance. Id. These factors are to be viewed objectively and subjectively, such that "conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive -- is beyond Title VII's purview." Harris v. Forklift Sys., Inc., 510 U.S. 17, 20 (1993).

A plaintiff cannot rely upon casual, isolated, or sporadic incidents to support her claim of hostile work environment sexual harassment. See Andrews, 895 F.2d at 1482; Harris, 510 U.S. at 20. While it is possible for a single action to constitute a claim for hostile work environment sexual harassment if the act is "of such a nature and occurs in such circumstances that it may

reasonably be said to characterize the atmosphere in which a plaintiff must work," generally a plaintiff must show that she was subjected to "repeated, if not persistent acts of harassment." Bedford v. Southeastern Pennsylvania Transportation. Authority, 867 F. Supp. 288, 297 (E.D. Pa. 1994). Indeed, courts have required a plaintiff to show that she has been "subjected to continued explicit propositions or sexual epithets or persistent offensive touchings." Miller v. Aluminum Co. of America, 679 F. Supp. 495, 502 (W.D. Pa.), aff'd, 856 F.2d 184 (3d Cir. 1988). A supervisor's criticism of an employee's work, while not sexual in nature, may be considered in the totality of the circumstances in determining whether the environment was hostile. See Aman v. Cort Furniture Rental Corporation, 85 F.3d 1074, 1083 (3d Cir. 1996) (noting in a racial harassment case that the alleged behavior does not have to be overtly racial in nature to contribute to a pervasive and severely hostile environment). However, such criticism alone will not support a claim for hostile work environment sexual harassment. See Miller, 679 F. Supp. at 502 ("Snubs and unjust criticisms of one's work are not poisonous enough to create an actionable hostile work environment.").

Wyeth attacks McGraw's claim of hostile work environment sexual harassment on the second element of the Andrews test, the pervasiveness and regularity of Maggio's behavior, and the fifth element, the existence of respondeat superior liability. To support her argument regarding the pervasiveness, regularity, and severity of Maggio's advances, McGraw claims that Maggio's requests that she go out with him occurred more than five times in the beginning of 1994 but then became "constant" in April and May of that year. Maggio also asked McGraw repeatedly if she was happy with her husband after her marriage in July of 1994. McGraw also notes the hostile consequences she met from Maggio when she continually denied his advances,

including a verbal warning letter on May 9, 1994, and her placement on a PIP on October 13, 1994. McGraw also alleges that other employees, noting Maggio's behavior toward her, began to scrutinize her, report on her, and withhold communication from her.

Following the considerations outlined in Meritor Savings Bank, supra, I find that, taking McGraw's evidence and allegations as true, McGraw has not as a matter of law produced evidence sufficient to support her contention that Maggio's actions were severe, pervasive, or regular. In her deposition, McGraw was unable to pin down how often the incidents occurred or even if they occurred on a daily, weekly, or monthly basis. The bulk of the actions of Maggio were not severe. Maggio's requests for a date, while undoubtedly unwelcome, were not patently offensive or severe. While his kissing her on her birthday and touching her face are arguably more severe actions, these events do not rise to the level of severity required to make a claim for hostile work environment sexual harassment. McGraw did not indicate that she was humiliated or felt physically threatened by Maggio's kissing her or touching her face. Although McGraw claimed that she felt physically threatened when Maggio yelled at her in her cubicle, that was a lone instance. Finally, McGraw has proffered no evidence indicating that Maggio's actions were so pervasive, regular, or severe as to alter the conditions of her work, nor did she allege that Maggio's actions interfered with her ability to do her job. I conclude that a reasonable fact finder could not find that McGraw was subject to the conduct necessary to prove this element of the hostile work environment test.

Because I find that McGraw has failed to show that Maggio's alleged conduct was severe, pervasive, and regular, it is unnecessary to reach Wyeth's argument that McGraw has failed to establish the respondeat superior liability of Wyeth. Wyeth is entitled to judgment as a matter of

law on McGraw's hostile work environment sexual harassment claims under Title VII and the PHRA.

C. Disparate Treatment

To establish a claim for disparate treatment under Title VII, a plaintiff must show that: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she was discharged from or denied the position; and (4) that non-members of the protected class were treated more favorably. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). In a situation in which an employee claims she was discriminatorily discharged, she may show that similarly situated persons outside of the protected class were retained. See Phillips v. Dalton, 1997 WL 24846, *3 (E.D. Pa.) Wyeth argues that McGraw fails the second and forth steps of this analysis, in that she was not qualified for the position from which she was terminated, as evidenced by the poor performance reviews throughout her employment and her placement on the PIP program, and that she has not offered any evidence that male employees were treated more favorably than she was treated at Wyeth or that similarly situated persons were not terminated.

I find that McGraw has not come forth with evidence sufficient to survive a motion for summary judgment on her claim of disparate treatment. Even if McGraw can show a factual issue as to the first three elements of this claim, as to the third element, the only evidence McGraw proffers is that Wyeth replaced her with a male employee after she was terminated. This is not enough to demonstrate disparate treatment or raise an influence of unlawful discrimination under Title VII. See Phillips, 1997 WL at *3 (noting that "plaintiff must show

that [s]he was terminated 'under circumstances which give rise to an inference of unlawful discrimination.'") (quoting Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981); Carson v. Bethlehem Steel Corporation, 82 F.3d 157, 159 (7th Cir. 1996) ("That one's replacement is of another race, sex, or age may help to raise an inference of discrimination, but it is neither a sufficient nor a necessary condition."). Thus, summary judgment will be granted to Wyeth on McGraw's disparate treatment claims under Title VII and the PHRA.

D. Retaliation

Title VII prohibits employers from retaliating against employees who have "opposed any practice made unlawful employment practice by [Title VII], or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceedings or hearing under [Title VII]." 42 U.S.C. § 2000e-3(a). Under the applicable McDonnell Douglas model, to establish a prima facie case of retaliation, an employee must show (1) she engaged in activity protected under Title VII, (2) that the employer took an adverse employment action against her, and (3) a causal connection between her protected activity and the adverse employment action. See Nelson v. Upsala College, 51 F.3d 383, 386 (3d Cir. 1995). Once the plaintiff has met this burden, the defendant has the burden to produce a legitimate, nondiscriminatory reason for the employment action. See Quiroga v. Hasbro, Inc., 934 F.2d 497, 501 (3d Cir.), cert. denied, 502 U.S. 940 (1991). After this, the plaintiff must then demonstrate that the defendant's reason is a pretext for discrimination. See Waddell v. Small Tube Prods., Inc., 799 F.2d 69, 73 (3d Cir. 1986).

The Court of Appeals for the Third Circuit has held that informal protests of

discrimination, such as complaints to management, rise to the level of protected activity. See Barber v. CSX Distrib Servs, 68 F.3d 694, 702 (3d Cir. 1995) (citing Sumner v. United States Postal Service, 899 F.2d 203, 209 (2d Cir. 1990)). An employee does not have to be correct on the underlying merits of her discrimination claim for her actions to be protected activity; an employee only need to act "under a good faith, reasonable belief that a violation existed." Griffiths v. CIGNA Corp., 988 F.2d 457, 468 (3d Cir. 1993).

It is clear that McGraw engaged in protected activity when she reported Maggio's behavior to Helmer in the Human Resources Department as this was what she was instructed to do under the sexual harassment policy at Wyeth. The adverse action McGraw suffered was her subsequent termination from Wyeth.

The third element McGraw must show is that a causal connection exists between the first two elements. A causal connection between an employee's protected activity and an adverse action by her employer may be inferred if the events occurred close in temporal proximity to each other. See Kachmer v. Sungard Data Systems, Inc., 109 F.3d 173, 178 (3d Cir. 1997) (holding that there are no specific time parameters to raise an inference of causation and that "[w]hen there may be valid reasons why the adverse employment action was not taken immediately, the absence of immediacy between the cause and effect does not disprove causation"); Jalil v. Avdel Corporation, 873 F.2d 701, 708 (3d Cir. 1989), cert. denied, 493 U.S. 1023 (1990).

Maggio met with Helmer and Beihm the same day that Helmer concluded her investigation of McGraw's claim to discuss the top item on his agenda, which was termination of McGraw. Maggio made his recommendation that McGraw be terminated within one month of her reporting his advances and other discriminatory conduct to Helmer. (Maggio dep. at 458-59).

He resubmitted the recommendation to personnel again in January of 1995. (Maggio dep. at 459). Even though McGraw was not terminated until February of 1995, it is reasonable to infer that the termination was based on Maggio's earlier recommendation. Indeed, it is reasonable to infer that although McGraw was not terminated until February, Maggio made his decision to fire her within hours after the conclusion of the investigation into McGraw's complaint and that he persisted in that decision. I find that McGraw has produced evidence such that a reasonable jury could find she established the necessary causal nexus between her termination and the exercise of the protected activity, thus, she has established a prima facie case of retaliation.

Once McGraw has satisfied her prima facie case of retaliation, the burden shifts to the defendant at this stage of the case to come forward with a nondiscriminatory reason for her termination. Wyeth argues that McGraw was terminated because of her poor job performance, not in retaliation for lodging her sexual harassment complaint. In support of this, Wyeth points to the evaluations that McGraw received which rated her performance at "below expectations," her verbal warning, and her placement on the PIP. However, giving McGraw all reasonable inferences from the facts in her favor, the evaluative validity of this evidence is suspect because Maggio, the alleged perpetrator, was her supervisor and the one who wrote the evaluations, gave her the verbal warning, and decided to implement the PIP. Indeed, McGraw refutes the validity of Maggio's evaluations of her work and offers her rebuttals to those evaluations as evidence of this. I find that there is a genuine issue of material fact as to the quality of McGraw's work performance, which is the basis of Wyeth's purported nondiscriminatory reason for McGraw's termination. Thus, summary judgment is precluded on McGraw's claims of retaliation under Title VII and the PHRA.

IV. CONCLUSION

Based on the foregoing analysis, Wyeth's motion for summary judgment will be granted in part and denied in part.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

	:	**CIVIL ACTION**
PAULA G. McGraw,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WYETH-AYERST LABORATORIES, INC. a division of AMERICAN HOME PRODUCTS CORPORATION,	:	
	:	
Defendant.	:	**NO. 96-5780**

O R D E R

AND NOW, this 23rd day of December, 1997, upon consideration of the motion of defendant Wyeth-Ayerst Laboratories, Inc. ("Wyeth") for summary judgment (Document No.10), the response of plaintiff Paula G. McGraw ("McGraw") (Document No. 13), and the reply by Wyeth (Document No. 16), as well as the pleadings, depositions, affidavits, and admissions on file, and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the motion is **GRANTED IN PART** and **DENIED IN PART** in accordance with the following:

1. **SUMMARY JUDGMENT** is hereby **GRANTED** in favor of Wyeth and against McGraw on her claims of hostile work environment sexual harassment and disparate treatment under Title VII and the Pennsylvania Human Relations Act ("PHRA") in **Counts I and II**;

2. **SUMMARY JUDGMENT** is hereby **DENIED** on the claims of quid pro quo sexual harassment and retaliation under Title VII and the PHRA in **Counts I, II, III, and IV**;

IT IS FURTHER ORDERED that the parties shall submit a joint report to the Court no later than **January 19, 1998** as to the status of settlement. If the parties need the assistance of the Court in facilitating settlement negotiations, the report should so indicate. By said date, plaintiff shall contact the Deputy Clerk to arrange a date for a final scheduling conference.

LOWELL A. REED, JR., J.